

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10164 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOTIBHAI HEMABHAI BHIL (MAJI RANA)

Versus

STATE OF GUJARAT

Appearance:

Mr Prajapati for M/S THAKKAR ASSOC. for Petitioner
Mr.MR ANAND, G.P. with Ms.Ami Yagnik, A.G.P.for
Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 19/02/97

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the detention order dated 7th November 1996 rendered by respondent No.2 u/s.3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985) (for short "the PASA Act").

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B. They inter-alia indicate that the petitioner has been carrying on criminal and anti-social activities of selling the country liquor and one prohibition case of 1995 and seven prohibition cases of 1996 have been registered under the provisions of the Bombay Prohibition Act with Palanpur Police Station, against the petitioner as per the particulars set out in the grounds of detention.

3. It has been recited that the petitioner's anti-social activities tend to obstruct the maintenance of public order and in support of the said conclusion statements of four witnesses have been relied upon referring to the incidents set out in the statement of such witnesses. It has also been recited that the petitioner's activities are likely to adversely affect the public health.

4. The impugned order of detention has been challenged, inter alia, on the ground that the impugned order of detention is not legal and valid in view of the fact that the detaining authority, while passing the said order, fixed the period of detention of one year. In support of this argument a Bench decision of this Court in the case of Pravin Mahipatrai Mehta V/s. District Magistrate, Surendranagar & ors., reported in 1993 (1) G.C.D. 671 (Guj.) has been relied upon. This Court relied upon a decision of the Apex Court in the case of Makhan Singh V/s. State of Punjab, reported in AIR 1952 SC 27 for saying that it is only after the advisory Board, to which the case has been referred, reports that the detention is justified, the Government should determine what the period of detention should be and not before and the fixing of the period of detention in the initial order itself would be contrary to the scheme of the Act and could not be supported. Having gone through the impugned order of detention, I find that the Detaining Authority itself has fixed the period of detention which would clearly be contrary to the scheme of the provision of Section 3(3) of the PASA Act and other provision thereof read with express provision of Article 22(4) of the Constitution of India as held by this Court in Pravin Mahipatram's case (supra).

5. In the result, The impugned order of detention is hereby quashed and set aside. The petitioner-detenu Motibhai Hemabhai Bhil (Maji Rana) shall be forthwith set at liberty, if he is not required to be detained in any other case. Rule made absolute accordingly.

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